

FILED

OCT 01 2018

Clerk, U.S. Courts
District Of Montana
Missoula Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

RANDY BRYANT WICK,

Plaintiff,

vs.

MISSOULA COUNTY, et al.,

Defendant.

CV 17-148-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations in this case on June 4, 2018, recommending that Defendants Missoula County, Sheriff McDermott, Officer More, and the State of Montana be dismissed. (Doc. 11 at 5.) Wick timely filed an objection on June 11, 2018. (Doc. 12.) Consequently, Wick is entitled to de novo review of those findings and recommendations to which he has specifically objected. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Wick objects to Judge Lynch's recommendation that Missoula County, the State of Montana, and Police Chief Mike Brady be dismissed because they were not named as defendants in Wick's Amended Complaint. Wick contends that he inadvertently failed to name these defendants.

Reviewing de novo, the Court concludes that Judge Lynch correctly stated and interpreted the law and the record. An amended complaint wholly supersedes an earlier filed complaint, and an individual cannot sue a person who goes unnamed in the complaint. The Court cannot reject Judge Lynch's Findings and Recommendation because the operative complaint does not name Missoula County, the State of Montana, and Police Chief Mike Brady as defendants. Additionally, the Court notes that, as discussed in the Order of April 9, 2018 (Doc. 7), the original complaint did not include adequate allegations as to the State of Montana and Missoula County. Moreover, as Wick has only recently identified Police Chief Mike Brady as a possible defendant, he has neither identified Brady as a defendant nor pled any facts allowing a claim against Brady to proceed.

However, the deadline to file an amended complaint has not yet passed. According to the Scheduling Order dated August 20, 2018 (Doc. 20), Wick has until October 31, 2018 to file a motion to amend the pleadings. If Wick would like to name additional defendants in an amended pleading, he may file a motion prior

to the listed deadline. Wick is counseled to comply with the requirements of Local Rule 15.1, which requires him to attach his proposed amended complaint to his motion to amend. Additionally, Wick should review the April 9, 2018 Order (Doc. 7), which describes the elements that must be satisfied if his claims are to proceed.

The Court reminds Wicks that an amended complaint will supersede all previous complaints. Thus, an amended complaint must name all defendants and include facts sufficient to support a finding of liability on the part of each individual defendant.

Reviewing the remaining portions of Judge Lynch's Findings and Recommendations for clear error and finding none,

IT IS ORDERED that Judge Lynch's Findings and Recommendations (Doc. 11) are ADOPTED. Missoula County, Sheriff McDermott, Officer More, and the State of Montana are DISMISSED.

DATED this 1st day of October, 2018.



Dana L. Christensen, Chief Judge
United States District Court